

CHAPTER 5

SENIOR OFFICERS LEGAL ORIENTATION

NONJUDICIAL PUNISHMENT

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CHAPTER 5

NONJUDICIAL PUNISHMENT

I. INTRODUCTION

II. RESOURCES

- A. UCMJ art. 15 (2002).
- B. MANUAL FOR COURTS-MARTIAL, UNITED STATES pt. V (2002) [hereinafter MCM].
- C. U.S. DEPT OF ARMY, REG. 27-10, LEGAL SERVICES: MILITARY JUSTICE chs. 3, 4, 21 (6 Sep. 2002) [hereinafter AR 27-10].

III. AUTHORITY TO IMPOSE NONJUDICIAL PUNISHMENT

- A. Who may impose? AR 27-10, para. 3-7.
 - 1. Commanders.
 - 2. Joint Commanders. *See* AR 27-10, para. 3-7*b*.
- B. Can Article 15 authority be delegated? AR 27-10, para. 3-7*c*.
 - 1. Article 15 authority may *not* be delegated.
 - 2. Exception: General court-martial convening authorities and commanding generals can delegate Article 15 authority to a deputy or assistant commander or to chief of staff (if general officer or frocked to general officer rank). Delegation must be written.

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FY 2004

C. Can Article 15 Authority Be Limited? *Yes*.

1. Permissible limitations.

- a) Superior commander may *totally* withhold.
- b) Superior commander may *partially* withhold (e.g., over categories of personnel, offenses, or individual cases). No requirement that limitations be written but probably a good idea (e.g., write a memorandum or publish in post regulation).

2. Impermissible limitations.

- a) Superior commander cannot direct a subordinate commander to impose an Article 15.
- b) Superior commander cannot issue regulations, orders, or guides that either directly or indirectly suggest to subordinate commanders that --
 - (1) Certain categories of offenders or offenses are to be disposed of under Article 15.
 - (2) Predetermined kinds or amounts of punishment are to be imposed for certain categories of offenders or offenses.

IV. WHO CAN RECEIVE NONJUDICIAL PUNISHMENT?

A. Military Personnel of a Commander's Command. AR 27-10, para. 3-8.

- 1. Assigned.
- 2. Affiliated, attached, or detailed.
- 3. The "Beans and Bullets" Rule. AR 27-10, para. 3-8a(3)(b).

- B. Personnel of Other Armed Forces (services).

V. OFFENSE

- A. When is an Article 15 Appropriate? AR 27-10, para. 3-9.

- 1. **Minor** offenses.
- 2. Correct, educate, and reform offenders.
- 3. Preserve a soldier's record of service from unnecessary stigma.
- 4. Further military efficiency.

- B. Can a soldier be court-martialed for an offense that has been the subject of NJP?

- 1. Yes, if it is a serious offense. *United States v. Pierce*, 27 M.J. 367 (C.M.A. 1989). *See also* R.C.M. 907(b)(2)(D)(iv) and AR 27-10, para. 3-10.
- 2. Para. 1e, Part V, MCM states that ordinarily a “minor offense” is one that does not authorize the imposition of a dishonorable discharge or confinement in excess of one year if tried at a general court-martial. That same paragraph, however, makes clear that determining what is a minor offense versus a major offense is within the discretion of the imposing commander, considering a number of factors including circumstances of the offense; age, rank, duty assignment, record and experience of the offender; and maximum sentence if tried by general court-martial. *See United States v. Gammons*, 51 M.J. 169 (1999); *Turner v. Dep’t of Navy*, 325 F.3d 310 (D.C. Cir. 2003). The maximum punishment authorized for an offense is not controlling. *United States v. Pate*, 54 M.J. 501, 506 (Army Ct. Crim. App. 2000).

- C. Once Article 15 imposed, cannot impose another Article 15 for same offense or substantially same misconduct. AR 27-10, para. 3-10.

VI. TYPES OF ARTICLE 15

- A. Summarized Article 15. AR 27-10, para. 3-16.
 - 1. Appropriate where soldier is enlisted *and* punishment should not exceed 14 days extra duty, 14 days restriction, oral admonition or reprimand, or any combination thereof.
 - 2. Recorded on DA Form 2627-1 (AR 27-10, p. 23).
- B. Formal Article 15. AR 27-10, para. 3-17.
 - 1. Appropriate if soldier is an officer, **OR**
 - 2. Punishment (for any soldier) might exceed 14 days extra duty, 14 days restriction, oral admonition or reprimand, or any combination thereof.
 - 3. Recorded on DA Form 2627 (AR 27-10, p. 24).

VII. NOTICE REQUIREMENTS

- A. Soldier must be notified of the following (AR 27-10, paras. 3-16*b* and 3-18):
 - 1. Commander's intention to dispose of the matter under Article 15.
 - 2. Offense suspected of.
 - 3. Maximum punishment that the commander could impose under Article 15.
 - 4. Soldier's rights under Article 15.
 - a) Formal
 - (1) A copy of DA Form 2627 with items 1 and 2 completed so defense counsel may review and properly advise soldier.

- (2) Consult with counsel (usually 48 hours).
- (3) Right to remain silent.
- (4) Demand trial by court-martial (unless attached to or embarked on a vessel).
- (5) Request an open hearing.
- (6) Request a spokesperson.
- (7) Examine available evidence.
- (8) Present evidence and call witnesses.
- (9) Appeal.

b) Summarized

- (1) Reasonable decision period (normally 24 hours).
- (2) Demand trial by court-martial.
- (3) Remain silent.
- (4) Hearing.
- (5) Present matters in defense, extenuation, and mitigation.
- (6) Confront witnesses.
- (7) Appeal.

B. Delegating the notice responsibility. AR 27-10, para. 3-18a.

1. Commander may delegate the notice responsibility to any subordinate who is a SFC or above (if senior to soldier being notified).
 2. Good way to involve first sergeant or command sergeant major.
- C. How to give notice. Follow AR 27-10, app. B.

VIII. HEARING

- A. In the commander's presence.
- B. "Open" v. "closed" hearing.
- C. Witnesses.
- D. Spokesperson.
- E. Defense counsel's role.
- F. Rules of evidence.
 1. Commander is not bound by the formal rules of evidence, except for the rules pertaining to privileges.
 2. May consider any matter the commander believes relevant (including, e.g. unsworn statements and hearsay).
 3. But beware that if turned down, Military Rules of Evidence will apply at a court-martial.
- G. Decision on guilt.
- H. Proof beyond a reasonable doubt required. AR 27-10, para. 3-18l.

IX. PUNISHMENTS

- A. Maximum punishment. AR 27-10, para. 3-19, tbl. 3-1. Based on rank of imposing commander – field grade v. company grade and rank of soldier receiving punishment.
- B. Four types of punishment.
 - 1. Reduction in grade.
 - a) In general, commander who can promote to a certain grade can also reduce from that grade.
 - b) Officers and enlisted soldiers above the grade of E-6 cannot be reduced at an Article 15.
 - 2. Loss of liberty punishments.
 - a) Correctional custody.
 - b) Extra duty.
 - c) Restriction.
 - 3. Forfeiture of pay.
 - a) Forfeitures are based on grade to which reduced, whether or not reduction is suspended.
 - b) Forfeitures may be applied against a soldier's retired pay. AR 27-10, para. 3-19b(7)(b).
 - 4. Admonition and reprimand.
- C. Combination of punishments.

X. ARTICLE 15 FILING

- A. Summarized Article 15. AR 27-10, para. 3-16f.
 - 1. DA Form 2627-1 filed locally.
 - 2. Destroyed two years after imposition or upon transfer from the unit.
- B. Formal Article 15. AR 27-10, para. 3-37.
 - 1. Specialist/Corporal (E-4) and below.
 - a) Original DA Form 2627 filed locally in unit nonjudicial punishment or unit personnel files.
 - b) Destroyed two years after imposition or upon transfer to another general court-martial convening authority.
 - 2. All other soldiers.
 - a) Performance fiche or restricted fiche of OMPF.
 - b) Imposing commander's filing decision is subject to review by superior authority.
 - c) Records directed for filing in restricted fiche will be redirected to the performance fiche if the soldier already has an Article 15, received while he was a sergeant (E-5) or above, filed in his restricted fiche.
 - d) Superior commander cannot withhold subordinate commander's filing determination authority.

XI. APPEALS

- A. Soldier only has one right to appeal under Article 15. AR 27-10, para. 3-29.
- B. Time limits to appeal.

1. Reasonable time.
2. After five calendar days, appeal presumed untimely and may be rejected.

C. Who acts on an appeal?

1. Next superior commander. Should act on appeal within five calendar days or three calendar days for summarized proceedings.
2. Any superior commander, senior to the appellate authority, may act on an appeal.
3. Successor in command or imposing commander can take action on appeal.

D. Procedure for submitting appeal.

1. Submission of matters optional.
2. Submitted through imposing commander.

E. Action by appellate authority.

1. May conduct independent inquiry.
2. Must refer certain appeals to the SJA office for a legal review *before* taking appellate action. UCMJ art. 15(e); DA Form 2627, note 9 (on reverse of form).
3. May refer an Article 15 for legal review in any case, regardless of punishment imposed.
4. May take appellate action even if soldier does not appeal.
5. Options. AR 27-10, paras. 3-23 through 3-33.

- a) Approve punishment.
- b) Suspend. Suspension automatically includes a condition that the soldiers not violate any punitive article of the UCMJ. AR 27-10, para. 3-24. Consider vacation if subsequent misconduct or violation of a condition imposed by the commander.
- c) Mitigate.
- d) Remit.
- e) Set Aside. "Clear injustice."

F. Petition to the Department of the Army Suitability Evaluation Board (DASEB). AR 27-10, para. 3-43.

- 1. Sergeants (E-5) and above may petition to have DA Form 2627 transferred from the performance to the restricted fiche.
- 2. Soldier must present evidence that the Article 15 has served its purpose and transfer would be in the best interest of the Army.
- 3. Petition normally not considered until at least one year after imposition of punishment.

XII. PUBLICIZING ARTICLE 15S

- A. Permissible, but must delete social security number of the soldier and relevant privacy information. Avoid inconsistent or arbitrary policy. Special considerations for sergeants and above. AR 27-10, para. 3-22.

XIII. ADMINISTRATIVE CONSEQUENCES OF ARTICLE 15

- A. Formal Article 15 (DA Form 2627).
 - 1. Admissible at trial by court-martial during presentencing but record must be from "personnel records." R.C.M. 1001(b)(2). If trial is for

the same offense the subject of earlier nonjudicial punishment, Art. 15(f) allows an accused soldier to offer evidence that a disciplinary punishment has been imposed. In that case, the court-martial shall consider the prior punishment, if offered by the accused, in determining an appropriate punishment. *United States v. Gammons*, 51 M.J. 169 (1999).

2. Possible objections to the admissibility of records of nonjudicial punishment include:
 - a) Record of nonjudicial punishment is incomplete. *E.g., United States v. Rimmer*, 39 M.J. 1083 (A.C.M.R. 1994) (holding that record inadmissible because the form had no indication whether soldier appealed). *See also, United States v. Godden*, 44 M.J. 716 (A.F. Ct. Crim. App. 1996) (holding that administrative errors on record did not affect any procedural due process rights of appellant and record admissible).
 - b) Record not maintained in accordance with regulation. *E.g., United States v. Weatherspoon*, 39 M.J. 762 (A.C.M.R. 1994) (finding that record maintained in Investigative Records Repository was not a personnel record maintained in accordance with regulation because regulation specifically stated that records of courts-martial or nonjudicial punishment would not be maintained under its authority); *United States v. Davis*, 44 M.J. 13 (1996) (holding that records from Discipline and Adjustment Board Report admissible).
 - c) Record does not indicate that the accused had the opportunity to consult with counsel and the accused waived his/her right to demand trial by court-martial. *U.S. v. Booker*, 5 M.J. 238 (C.M.A. 1978); *U.S. v. Kelley*, 45 M.J. 259 (1996).
 - d) Record does not have discernible signatures. *United States v. Dyke*, 16 M.J. 426 (C.M.A. 1983).
 - e) Appeal incomplete. *United States v. Yarbough*, 33 M.J. 122 (C.M.A. 1991).
 - f) Record is for an offense subject to the current court-martial. *United States v. Pierce*, 27 M.J. 367 (C.M.A. 1989) (declaring

that record of prior nonjudicial punishment has no relevance to current court-martial). *But see, United States v. Dire*, 46 M.J. 804 (C.G. Ct. Crim. App. 1997) (averring that prior nonjudicial punishment could be relevant to show accused's recidivism; deciding case, however, on defense waiver).

3. May be considered in administrative proceedings.

B. Summarized Article 15 (DA Form 2627-1).

1. Not admissible at trial by court-martial. AR 27-10, para. 5-26.

2. May be considered in administrative proceedings.

XIV. JUDGE ADVOCATE'S ROLE

A. Commander's Advisor.

B. Defense Counsel.

XV. CONCLUSION

ARTICLE 15 NARRATIVE

Introduction

One of the most valuable disciplinary tools available to the commander is the authority to impose nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ). In the case of United States v. Booker, 5 M.J. 238 (C.M.A. 1977), the Court of Military Appeals recognized the role of nonjudicial punishment in the military:

We wholeheartedly express our firm belief that those exercising the command function need the disciplinary action provided for under Article 15 . . . to meet and complete their military mission.

The provisions of Article 15 are also discussed in Part V of the Manual for Courts-Martial (MCM) and Chapter 3, Army Regulation (AR) 27-10. These three sources are the primary authorities on nonjudicial punishment.

A. Applicable Policies

A commanding officer is encouraged to use nonpunitive measures to the maximum extent possible in furthering the efficiency of the command without resorting to the imposition of nonjudicial punishment. Resort to nonjudicial punishment is proper only in cases in which administrative measures are considered inadequate or inappropriate. Nonjudicial punishment may be imposed in appropriate cases to –

- Correct, educate, and reform offenders who have shown that they cannot benefit by less stringent measures;
- Preserve an offender's military record from unnecessary stigma by a court-martial conviction; and
- Further military efficiency by disposing of minor offenses in a manner requiring less time and personnel than trial by court-martial (AR 27-10, para. 3-2).

Before imposing punishment under Article 15 the commander should consider all options. In reviewing these options, the commander should be aware of the ultimate impact of his action upon the soldier's record and upon the discipline of the command. He should also consider the number of man-hours required to effect his decision. When an offense has occurred, one or more of the following options may be available to the commander:

1. No action.
2. Nonpunitive action.
 - a. Administrative reprimand/admonition (AR 600-37).

- b. Administrative reduction in grade for inefficiency (AR 600-8-19).
 - c. Extra training (AR 600-20, para. 4-4b).
 - d. Administrative separation (AR 635-200).
- 3. Nonjudicial punishment.
 - 4. Court-martial.

REFERENCE: MCM, Part V, paras. 1c, d; AR 27-10, paras. 3-2, 3-3.

B. Imposition Authority

1. Who May Give an Article 15?

The general rule is that any "commander" is authorized to impose punishment under Article 15. The term "commander," when speaking of Article 15 authority, refers to a "commissioned or warrant officer who, by virtue of that officer's grade and assignment, exercises primary command authority over a military organization or prescribed territorial area, that under pertinent official directives is recognized as a command" (AR 27-10, para. 3-7). Whether a unit constitutes a "command" sometimes raises questions. AR 27-10 indicates that "commands" include companies, troops, batteries, numbered units and detachments, missions, Army elements of unified commands and joint task forces, service schools, and area commands. This list is not exhaustive.

The commander's discretion to impose an Article 15 is personal and must not be hampered by any superior's "guidelines" or "policies" (AR 27-10, para. 3-4b). Although a superior commander may not tell a subordinate when to impose an Article 15 or how much punishment should be assessed, the superior commander may:

- a. Totally withhold the subordinate's imposition authority, or
- b. Partially limit imposition authority regarding (1) a particular category of offenses (e.g., all larcenies), (2) a certain category of personnel (e.g., all officers), or (3) a particular case (e.g., a fight involving soldiers at a local bar).

Because the authority to impose an Article 15 is an attribute of command, a commander may not, as a general rule, delegate that authority to a subordinate. The exception to that rule is that an officer authorized to exercise general court-martial jurisdiction and any commanding general may delegate Article 15 powers to a commissioned officer actually acting as a deputy or assistant commander. A general court-martial convening authority or a commanding general may also delegate the authority to the chief of staff, provided the chief of staff is a general officer. These delegations must be in writing and may be exercised only when the delegate is senior in rank to the person being punished (AR 27-10, para. 3-7c). A commander's delegation of the authority does not prevent that commander from personally acting in any case. An appeal from

punishment imposed under a delegation of power will be acted upon by the authority next superior to the officer who delegated the authority.

2. Who May Receive an Article 15?

A commander may impose nonjudicial punishment upon military members of the command. Individuals are considered to be members of the command if they are assigned to the command or affiliated with the command under conditions, either expressed or implied, which indicate that the commander of the unit is to exercise administrative or disciplinary authority over them. If there is any question as to whether an individual is within the command, written or oral orders that effect the individual's status should be examined. If the orders indicate that the soldier is attached for administration of military justice, or simply attached for administration, the individual normally will be considered to be a member of the command for purposes of Article 15. Otherwise, consider where the soldier slept, ate, was paid, performed duty, the duration of the status, and other similar factors (AR 27-10, para. 3-8a).

A soldier could be a member (for the purposes of Article 15) of several commands. For example, PFC Frank Jones, who is a member of Company A at Fort Sticks, goes on TDY to Fort Acres where he is temporarily assigned to Company B. Theoretically, he could be a member of both Company A and Company B for purposes of nonjudicial punishment. In such cases, coordination between commanders is appropriate.

An Article 15 may not be imposed upon an individual once military status as a member of the command has terminated. For example, once Jones returns to his parent unit (Company A), he is no longer amenable to punishment by the commander of Company B. The commander of Company B may forward reports of offenses to Company A's commander for possible Article 15 punishment (AR 27-10, para. 3-8b).

3. When is an Article 15 Appropriate?

The general rule is that an Article 15 should be offered only for minor offenses. A rule of thumb found in the MCM indicates that an offense is minor if the maximum authorized punishment for the offense does not include a dishonorable discharge or confinement for more than one year (MCM, Part V, para. 1e). That, of course, is only a guideline. The standard for determining whether the offense is minor is flexible and requires examination of the surrounding circumstances. For example, possession of cocaine is normally considered a "major" offense, but the circumstances of the possession may dictate that it is a minor offense for the purposes of an Article 15.

Occasionally, an Article 15 is given for a major offense. If this occurs, a higher level commander may still refer the case to a court-martial if he deems the Article 15 inappropriate for the magnitude of the offense. The soldier must be given full credit for the Article 15 punishment that was imposed. This type of situation should occur only rarely. A commander should not proceed with an Article 15 if he or she is planning to court-martial the soldier for the same offense later.

REFERENCE: MCM, Part V, para. 2; AR 27-10, paras. 3-7, 3-8, 3-9.

C. Procedures in Formal Proceedings

1. Notice.

The commander who is considering the imposition of an Article 15 must give written and oral notice to the soldier (MCM, Part V, para. 4a; AR 27-10, para. 3-18a). AR 27-10 allows the notice to be given by an officer or noncommissioned officer designated by the imposing commander. The noncommissioned officer must be a SFC or above and must be senior to the individual being notified. The officer or NCO who conducts the notice portion of the proceeding does not sign in Item 2; the imposing commander must always sign the Article 15. The vehicle for providing the written notice is DA Form 2627. A boilerplate notice/advice can be found at Appendix B of AR 27-10. Normally, the commander presents the form to the individual and orally explains the various options and rights that are available. These options and rights include the following:

- a. Article 31 rights.
- b. Right to demand trial.
- c. Right to consult with counsel.
- d. Right to request an open hearing.
- e. Right to request a spokesperson.
- f. Right to call witnesses.
- g. Right to appeal.

2. Rights and Rules.

The soldier is not entitled to know the type or amount of punishment that the soldier will receive if nonjudicial punishment ultimately is imposed. The soldier will be informed of the maximum punishment which may be given under Article 15, and, upon the soldier's request, the maximum punishment that could be adjudged by a court-martial upon conviction for the offense(s) (AR 27-10, para. 3-18f(2)). In addition, the soldier should be advised that the commander is not limited to the Article 15 charges if trial is demanded. This should not be a threat to add additional charges if trial is demanded, but may reflect that a commander selected one or two primary offenses to be dealt with by Article 15 and could list all offenses for a court-martial.

- a. Article 31, UCMJ, rights warnings. The soldier should initially be advised that: (1) he or she is suspected of having committed an offense; (2) he or she has the right to remain silent; and (3) anything said may be used against him or her in the Article 15 proceeding or in a court-

martial. AR 27-10, para. 3-18*b*.

b. Right to demand trial. Unless the individual is attached to or embarked in a vessel, he or she may demand trial by court-martial in lieu of an Article 15. If the soldier does not demand a court-martial, then the commander may proceed under Article 15. If the soldier demands trial by court-martial, the Article 15 proceedings must stop. The commander must then decide whether to prefer court-martial charges. As a practical matter, a commander considering punishment under Article 15 should ensure, before proceeding, that a "good case" exists against the individual; otherwise, the commander could find himself in the unenviable position of not being able to prefer charges in the case of an Article 15 turn-down because of the strong likelihood of acquittal or even dismissal. An Article 15 generally should not be offered unless the commander is satisfied that the case can be won at trial. AR 27-10, para. 3-18*d*.

c. Right to consult with counsel. The soldier must be informed of the right to consult with counsel before making any further decisions regarding the Article 15. For purposes of nonjudicial punishment, "counsel" means (1) a judge advocate, (2) a Department of the Army civilian attorney, or (3) an officer who is a member of the bar of a federal court or of the highest court of a state. Included within this right is notice of the location of qualified counsel and a reasonable time (suggested to be 48 hours) to consult with the counsel. AR 27-10, para. 3-18*c* and *f*.

d. Open hearing. The soldier may request that the proceedings be open to the public. In all cases the imposing commander decides if the hearing is open or closed. Whether the proceeding is open or not, it is still informal and nonadversarial. The individual has the right to have this proceeding in the presence of the commander who intends to impose the punishment unless such an "appearance is prevented by the unavailability of the commander or by extraordinary circumstances." In those circumstances, the commander will appoint a commissioned officer to hear the soldier's case and make a written summary and recommendations. The commander then makes his decision based on the written summary and recommendations (AR 27-10, para. 3-18*g*(1)).

e. Spokesperson. The soldier may wish to have a spokesperson present during the proceedings. The spokesperson need not be a lawyer, and no travel costs or other unusual costs may be incurred at Government expense for the spokesperson's presence. The role of spokesperson must be voluntary; he or she may not be ordered to participate. Neither the spokesperson nor the soldier has a right to question or cross-examine any witnesses who may appear unless the commander agrees. The spokesperson or the soldier may, however, propose lines of questioning or relevant areas to pursue. AR 27-10, para. 3-18*h*.

f. Witnesses. Should the soldier request witnesses, the commander decides whether they are available. If the witnesses are located at the installation or nearby, they are considered available if their attendance would not unnecessarily delay the proceedings. No witness fees or transportation fees are authorized. AR 27-10, para. 3-18*i*.

g. Right to appeal. The soldier should be advised of the right to appeal the punishment. AR 27-10, para. 3-18*m*.

3. Consultation with counsel.

The commander will provide a reasonable opportunity (normally 48 hours) for the soldier to consult with counsel and decide whether to demand court-martial. If at the end of the designated time (including extensions) the soldier has not demanded trial by court-martial, the commander may impose punishment. The commander may also impose the Article 15 if the individual refuses to complete or sign Block 3 of the DA Form 2627 after having been given a reasonable time to do so. The individual should be told during the initial notification that punishment can be imposed if he or she fails to make a timely demand for trial or refuses to sign. If punishment is imposed under these conditions, the DA Form 2627 will reflect that fact at item 4 (see AR 27-10, para. 3-18*f*(4)).

4. Hearing.

After consulting with counsel, the soldier returns to the commander and completes DA Form 2627 indicating what options are to be exercised (demand trial, open hearing, etc.). If the soldier elects to proceed under Article 15, a hearing takes place at which the commander determines the guilt or innocence of the soldier. During the hearing the commander hears and considers all the evidence for and against the soldier, and if the soldier is found guilty, evidence of extenuating and/or mitigating factors. See Appendix B, AR 27-10 for further guidance in conducting the hearing.

The commander is not bound by the formal rules of evidence, except those pertaining to privileges, and may consider any matter, including unsworn statements, he or she reasonably believes to be relevant to the offense. The standard for guilt at the Article 15 proceeding is proof beyond a reasonable doubt.

REFERENCE: MCM, Part V, para. 4; AR 27-10, paras. 3-17, 3-18.

D. Article 15 Punishments

A field grade officer has substantially more punishment power than a company grade officer. See the punishment chart at Table 3-1, AR 27-10. If a company grade officer does not believe that his or her punishment authority is sufficient, the case may be forwarded to the first field grade officer in the chain of command. The company grade officer may recommend that the field grade officer exercise Article 15 power in the case; however, AR 27-10 prohibits a specific recommendation as to the nature or extent of the punishments that should be imposed. (AR 27-10, para. 3-5).

There are four general types of Article 15 punishments: censure, loss of liberty, deprivation of pay, and reduction in grade.

1. Censure.

There are two types of censure: admonition and reprimand. For enlisted personnel, admonitions and reprimands may be oral or written. For officers, they must be written. The admonition is a warning that if the particular conduct is repeated, adverse action will follow. The reprimand is a means of condemning past conduct. The censure should specifically indicate that it is being imposed as punishment under Article 15 (AR 27-10, para. 3-3b).

2. Loss of Liberty.

There are five types of punishment involving loss of liberty that can be imposed under Article 15:

a. Correctional Custody may be imposed upon enlisted soldiers in the grade of E-3 or below. Correctional custody may only be imposed if a correctional custody facility is available for use.

b. Arrest in Quarters is reserved for commissioned officers or warrant officers. While in this status the individual may not exercise command. If a superior commander, knowing of the arrest status, assigns command duties to the officer, the arrest terminates. AR 27-10, para. 3-19b(4).

c. Extra Duty may be performed at any time and for any length of time within the duration of the punishment. Normal extra duties might include fatigue details, but no duty may be imposed as extra duty which constitutes cruel or unusual punishment, or a punishment not sanctioned by service customs, is normally intended as an honor (e.g., guard of honor), requires the soldier to perform in a ridiculous or unnecessarily degrading manner, constitutes a safety or health hazard to the offender, or would demean the soldier's position as a NCO or specialist.

d. Restriction means that the individual must remain within specified limits (e.g., company area). The limits may be changed later as long as the new limits are not more restrictive than the original limits. Unless otherwise specified, the individual continues to perform military duties.

e. Confinement on diminished rations may be imposed only upon enlisted personnel in the grade of E-3 or below who are attached to or embarked on a vessel (MCM, Part V, para. 5c(5) and AR 27-10, para. 3-19b(2)).

3. Deprivation of Pay.

Forfeiture of pay is a permanent loss of basic pay, sea pay, and foreign duty pay. If the imposed punishment includes a reduction, the forfeiture is based on the lower pay grade. Forfeitures can be applied against a soldier's retirement pay.

An imposed punishment of forfeiture of pay should be indicated in dollar amounts as follows (AR 27-10, para. 3-19b(9)):

When the forfeiture is to be applied for not more than 1 month:

"Forfeiture of \$_____,"

When the forfeiture is to be applied for more than 1 month:

"Forfeiture of \$_____ per month for 2 months."

4. Reduction in Grade.

A reduction in grade is the most severe form of nonjudicial punishment. It affects not only the amount of pay the individual will receive but often results in loss of privileges and responsibilities.

The following rules relate to this form of punishment:

a. A reduction may be imposed only by a commander who has general authority to promote to the grade that the soldier currently holds. AR 600-8-19 provides:

The commanders below may promote, subject to authority and responsibility by higher commanders, as follows:

<u>Grades</u>	<u>Promotion Authority</u>
E-4 and below	Company grade commanders, (para. 1-9).
E-5 and E-6	Field grade commanders of any unit authorized a commander in the grade of lieutenant colonel (O-5) or higher, (para. 3-1).
E-7, E-8 and E-9	Headquarters, Department of the Army, (para. 4-1).

AR 600-8-19, para. 7-3, prohibits the reduction for misconduct of personnel in grades E-7 through E-9 under Article 15.

b. An individual in grade E-5 or E-6 or above may be reduced only one grade at a time in peacetime (MCM, Part V, para. 5b(2)(B)(iv)).

c. The new date of rank is the date the reduction is imposed. If the commander suspends the reduction, the date of rank for the grade held before imposition remains the same (AR 27-10, para. 3-19b(6)(b)).

5. Combinations of Punishments.

Normally, no two or more punishments involving deprivation of liberty may be combined to run either consecutively or concurrently. Restriction and extra duties may be combined, however, in any manner to run for a length of time not exceeding the maximum period for extra duties (45 days for field grade punishment, 14 days for company grade punishment).

6. Effective Date of Punishments.

A punishment is "imposed" on the date the commander signs the DA Form 2627 (Items 4-6, DA Form 2627, or Items 2-3, DA Form 2627-1). All punishments, if unsuspended, take effect the date they are imposed unless the commander, or a superior authority, prescribes otherwise.

If, when punishment is imposed, the soldier indicates a desire to appeal the punishment, the command has five calendar days (three days for summarized proceedings) excluding the date of submission, to decide the appeal. If the appeal is not decided in this five-day period, punishments involving loss of liberty (correctional custody, extra duty, restriction, etc.) will be interrupted at the soldier's request pending decision on the appeal (AR 27-10, para. 3-21).

REFERENCE: MCM, Part V, para. 5; AR 27-10, paras. 3-19 through 3-22.

E. Appeals

As noted earlier, one of the rights available to an individual being punished under Article 15 is the right to appeal. The recognized grounds for appeal are:

- Based on the evidence, the soldier was not guilty.
- Punishment was disproportionate to the offense.

The appeal is started with a notation on the DA Form 2627 in Item 7, when the soldier indicates a desire to appeal the punishment. Only one appeal is permissible in Article 15 proceedings. The appellate authority may reject an appeal not made within a reasonable period of time. Normally, an appeal submitted within 5 days after imposition of the punishment is considered timely. The commander may extend that time for good cause. (AR 27-10, para. 3-29). If, at the time of imposition of punishment, the soldier indicates a desire not to appeal, the superior authority may reject a subsequent election to appeal, even if it is made within the 5-day period (AR 27-10, para. 3-29). The decision to file the Article 15 in the performance or restricted fiche (Item 5, DA Form 2627) is subject to appeal (AR 27-10, para. 3-37b(a)).

Who acts on the appeal? The soldier's appeal is routed through the commander who imposed the punishment. This commander may reconsider and take mitigating action. If the commander

so acts, the individual should be informed and asked whether, in view of the commander's clemency action, he or she wants to withdraw the appeal. Unless the appeal is voluntarily withdrawn, it is forwarded to the appellate authority, who is the authority "next superior" to the commander who imposed the punishment. For example, an appeal from an Article 15 imposed by a company commander would be sent to the soldier's battalion commander (AR 27-10, para. 3-30).

If the individual is transferred before the appeal is started, the appeal would be sent to the "new" appellate authority (i.e., the new battalion commander if we extend the example given above).

You will also recall that when we discussed the delegation of authority to impose an Article 15, we noted that in limited cases the authority could be delegated. The same holds true here. A "superior authority" who is a commander exercising general court-martial jurisdiction or is a general officer in command may delegate appellate powers to a commissioned officer of the command who is actually serving as a deputy or assistant commander. Such a commander may also delegate Article 15 appellate authority to a chief of staff who is a general officer.

1. Review by Judge Advocate.

Before an appellate authority may act, a judge advocate must review the case (Item 8, DA Form 2627; Note 9, back of DA Form 2627) if the punishment includes any of the following:

- a. Arrest in quarters for more than seven (7) days;
- b. Correctional custody for more than seven (7) days;
- c. Forfeiture of more than seven (7) days' pay;
- d. Reduction of one or more pay grades from the fourth or a higher pay grade;
- e. Extra duties for more than 14 days;
- f. Restriction for more than 14 days.

2. Options.

The appellate authority has a number of available options in deciding what action to take on an Article 15. The punishment may be approved as it stands (assuming that it is valid), but it may not be increased in either quality or quantity. The remaining options are actions that are viewed as lessening the imposed punishment.

a. Suspension. The purpose of suspending the punishment (or portions thereof) is to provide a probationary period for the soldier. If the soldier commits further misconduct amounting to an offense under the UCMJ, or violates a written condition of suspension during the period of suspension, the suspension may be "vacated" and the punishment executed. If the

punishment is not vacated before the end of the period of suspension, however, the punishment will be automatically canceled. Note that misconduct that causes a suspension to be vacated may also be the subject of a new Article 15.

Several special rules on suspension should be noted (MCM, Part V, para. 6a):

(1) An executed punishment of reduction or forfeiture may be suspended only within a period of four months after the date of imposition.

(2) Suspension of a punishment may not be for a period longer than six months from the date of suspension.

(3) Expiration of enlistment or term of service automatically terminates the suspension.

(4) Although a formal hearing is not required to vacate a suspension, the soldier should, unless impracticable, be given an opportunity to appear before the commander and present matters in defense, extenuation, or mitigation, if the punishment in question is one of those which would require judge advocate review (see preceding section).

b. Mitigation. Mitigation is a reduction of the quantity or quality of the punishment while the general nature of the punishment remains the same (AR 27-10, para. 3-26).

Example: Restriction for 14 days is reduced to restriction for seven days, or extra duties for 14 days is reduced to restriction for 14 days.

Example: Reduction in grade is converted to forfeiture of pay or to an intermediate grade. Note: This is an exception to the rule that requires the general nature of the punishment to remain the same. Furthermore, in this instance care should be exercised to ensure that the mitigated punishment of forfeiture of pay, added to any other forfeitures which might have been originally imposed, does not exceed the maximum amount of loss of pay which could have been originally imposed.

c. Remission. This action cancels any unserved portion of the punishment. Remission does not cancel the Article 15 itself, only that portion of the punishment that has not been served. Note that an unsuspended reduction in grade is executed immediately and therefore, can never be remitted. A discharge automatically remits the unserved portion of the punishment.

d. Setting Aside. If the punishment results in a clear injustice, the punishment or any portion thereof may be set aside and the soldier's rights and property restored. The punishment set aside may be executed or unexecuted (AR 27-10, para. 3-28). Set aside actions should normally be taken within four months of the imposition of the punishment (MCM, Part V, para. 6d), but such actions may be taken even after four months where there are unusual circumstances.

Although mitigating actions are normally taken on "appeal," the commander who imposed the punishment could take these steps even in the absence of an appeal, formal or otherwise. In

addition, a "successor in command" to the commander who imposed the punishment may also take action on the punishment. Furthermore, any "superior authority" may take these actions. For example, Jones appeals her Article 15 (imposed by her company commander) to her battalion commander, who in turn approves the punishment. The brigade commander may learn of the situation and suspend a portion of the punishment even though Jones has no right of appeal to the brigade commander (AR 27-10, para. 3-35).

REFERENCE: MCM, Part V, paras. 6, 7; AR 27-10, paras. 3-23 through 3-35.

F. Summarized Procedures

A commander may utilize summarized proceedings when dealing with the misconduct of an enlisted member of the command. The punishment imposed may not exceed 14 days restriction, 14 days extra duty, an oral reprimand or admonition, or any combination of these sanctions. The imposing commander or a designated subordinate (officer or noncommissioned officer in the grade of E-7 or above) will inform the soldier of the following:

1. The intent to proceed under Article 15, UCMJ.
2. The intent to use summarized proceedings.
3. The maximum punishment under summarized proceedings.
4. The right to remain silent.
5. The offenses allegedly committed and the articles of the UCMJ violated.
6. The right to demand trial.
7. The right to confront witnesses, examine adverse evidence, and submit matters in defense, extenuation and mitigation.
8. The right to appeal.

The soldier will be given a reasonable time (normally 24 hours) to decide whether to demand trial or to gather matters in defense, extenuation, and mitigation. There is no right to consult with legally qualified counsel. A spokesperson will not accompany the soldier at the proceedings. The soldier will be given a reasonable time (normally five days) to appeal. If an appeal is taken, punishment may be served pending a decision on appeal. Appeals should be promptly decided. If not decided within three calendar days, and if the soldier so requests, further performance of any punishment involving deprivation of liberty (extra duty and restriction) will be delayed pending decision on the appeal. The summarized proceedings will be legibly recorded on DA Form 2627-1. The form may be handwritten.

G. Filing

For soldiers in pay grade E-4 and below, all formal Article 15s (DA Form 2627) are filed locally in unit nonjudicial punishment files. They remain there for two years or until transfer to another general court-martial convening authority for a non-medical reason, whichever occurs first. For all other soldiers, records of formal Article 15s are filed in the Official Military Personnel File (OMPF). The imposing commander decides whether the Article 15 will be filed in the performance fiche or the restricted fiche of the OMPF. If, however, a soldier has an Article 15 in his or her restricted fiche, received while the soldier was a sergeant (E-5) or above, then any subsequent Article 15 will be filed in the soldier's performance fiche, regardless of the imposing commander's filing designation. Career managers and selection boards routinely use the performance fiche, and a filing on this fiche will likely have an adverse impact on the soldier's career. Access to the restricted fiche is typically more limited.

Summarized Article 15s (DA Form 2627-1) are maintained locally. They remain there for two years or until transfer from the unit. Summarized Article 15s may not be used in subsequent court-martial proceedings, but they may be used in adverse administrative actions.

REFERENCE: AR 27-10, paras. 3-36 through 3-40.

H. Supplemental Action

Even after action has been taken on an appeal and/or after DA Form 2627 has been properly filed, a commander can still take supplemental action on the Article 15. Such action may include mitigation, remission, suspension, set aside, or vacation, so long as it is taken within the time limits prescribed for each action. The supplemental action is recorded on DA Form 2627-2.

REFERENCE: AR 27-10, para. 3-38.

I. Publicizing of Article 15s

Article 15 punishment may be announced at the next unit formation after punishment is imposed or, if appealed, after the decision on the appeal. It also may be posted on the unit bulletin board, once the soldier's social security number and any other privacy information is deleted. The purpose of announcing the results of punishments is to preclude perceptions of unfairness of punishment and to deter similar misconduct by other soldiers. An inconsistent or arbitrary policy should be avoided regarding the announcement of punishment, to preclude the appearance of vindictiveness or favoritism. In deciding whether to announce punishment of soldiers in the grade of E-5 or above, the following should be considered:

1. The nature of the offense.
2. The individual's military record and duty position.
3. The deterrent effect.
4. The impact on unit morale or mission.
5. The impact on the victim.
6. The impact on the leadership effectiveness of the individual concerned.

REFERENCE: AR 27-10, para. 3-22.

J. Administrative Consequences

Records of nonjudicial punishment may result in serious consequences not directly associated with the punishment imposed. Under some circumstances, the Article 15 must be reported to the National Criminal Information Center (NCIC). This is generally true only for serious offenses. The NCIC can be accessed by certain governmental agencies nationwide and could adversely impact the soldier's ability to obtain certain civilian jobs. In addition, a formal Article 15 is generally admissible at trial if the soldier is subsequently court-martialed. On the other hand, summarized Article 15s are not admissible at courts-martial. Any type of Article 15 can be considered in Army administrative proceedings or actions such as administrative separation boards and bars to reenlistment. An Article 15 is not, however, an automatic bar to reenlistment.

REFERENCE: AR 27-10, paras. 3-44 and 5-28a(4); AR 601-280, para. 8-4d(7); AR 635-200.